



Docket No. EA-232-A

April 11, 2003

**APPLICATION OF OGE ENERGY RESOURCES, INC.  
FOR AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO CANADA**

OGE Energy Resources, Inc. ("OERI"), pursuant to Section 202(e) of the Federal Power Act ("FPA") 16 U.S.C. § 824(e) and 10 C.F.R. Section 205.300 to 205.309, hereby files its Application for blanket authority to transmit electric energy from the United States to Canada. OERI respectfully requests that the Department of Energy ("DOE") grant this Application for the reason stated below.

**I.**

**DESCRIPTION OF APPLICANT**

OERI is an Oklahoma corporation created for the purposes of marketing electricity, natural gas and other energy commodities throughout North America. OERI's principal place of business is 515 Central Park Drive, Suite 408, Oklahoma City, Oklahoma 73105. OERI is a wholly owned subsidiary of Enogex Inc., an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma.

OERI does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.<sup>1</sup> OERI operates as a marketer<sup>2</sup> and broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services. OERI will purchase power to be exported from federal power marketing agencies and electric utilities as defined in the §§ 3(19) and (22) of the FPA (16 U.S.C. §§ 796(19) and (22)). The instant application relates to OERI as a marketer of electric power only.

**II.**

**JURISDICTION**

No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this application.

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<sup>1</sup> OERI is affiliated with Oklahoma Gas and Electric Company, an Investor Owned Utility with generation, transmission and distribution assets in Oklahoma and Arkansas.

<sup>2</sup> As used herein, the terms "marketer" and "power marketer" mean an entity that buys and sells electric power for its own account. OERI has a currently effective power marketing rate schedule approved by the Federal Energy Regulatory Commission (FERC). A copy of the Order issued October 17, 1997, wherein OERI received FERC authorization to make sales of electric power at wholesale in interstate commerce at market-based rates under its Rate Schedule FERC No. 1, is attached hereto as Attachment 1.

### III.

#### COMMUNICATIONS

All service and correspondence concerning this application should be addressed to the following:

Patricia D. Horn  
General Counsel  
Enogex Inc.  
515 Central Park Drive, Suite 600  
Oklahoma City, Oklahoma 73105  
Tel. 405-525-7788  
Fax 405-558-4642

Tyson L. Williams  
Attorney  
OGE Energy Resources, Inc.  
515 Central Park Drive, Suite 408  
Oklahoma City, Oklahoma 73105  
Tel. 405-553-6400  
Fax 405-557-8628

### IV.

#### TECHNICAL DISCUSSION OF PROPOSAL

OERI seeks authority to transmit electric power to Canada as a power marketer. As noted above, OERI has no "system" of its own on which its exports of power could have a reliability or stability impact. OERI will purchase the power to be exported from electric utilities and federal power marketing agencies as those terms are defined in §§3(19) and (22) of the FPA. By definition, such power is surplus to the system of the generator therefore and thus will not impair the sufficiency of the electric power supply within the United States.<sup>3</sup>

OERI will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to effect any power exports. This would include (1) scheduling each transaction with the appropriate control area in compliance with all reliability criteria, standards, and guidelines of the North American Electric Reliability Council and member regional councils (the "NERC") in effect at the time of export and (2) obtaining all necessary transmission access over the existing facilities listed in Exhibit C.<sup>4</sup> As the Department of Energy ("DOE") noted in Order No. EA-102 issued to Enron Power Marketing, Inc.<sup>5</sup> (referred to hereinafter as "Enron"), DOE may utilize the reliability analyses performed in the most recent export authorization proceedings of the above-named transmission systems in order to make the findings required for a grant of export authority to OERI. OERI respectfully requests that DOE do so and agrees to abide by the export limits contained in the relevant export authorization of any transmission system over which OERI exports electric power to Canada. The controls which are inherent in any transaction which complies with all

<sup>3</sup> Order No. EA-102, issued February 6, 1996, to Enron Power Marketing, Inc.

<sup>4</sup> The location, voltage, owner and the Presidential Permits under which the relevant border transmission facilities were construed and are maintained are also set forth in Exhibit C.

<sup>5</sup> Order No. EA-102, issued February 6, 1996 to Enron Power Marketing, Inc.



NERC requirements and the export limits imposed by DOE on the above-named transmission systems are sufficient to ensure that exports by OERI would not impede or tend to impede the coordinated use of transmission facilities within the meaning of §202(e) of the FPA.

V.

**PROCEDURES**

OERI proposes to comply with procedures similar to those imposed on Enron. From time to time OERI will enter into agreements with third parties, which involve the export of electric power from the United States to Canada. Prior to commencing (or continuing) the export of electric power under such agreements, OERI will provide DOE with written evidence that sufficient transmission access to complete the export transaction has been obtained. OERI will make and preserve complete records with respect to the electric power exported to Canada and will provide DOE with quarterly reports within thirty (30) days following each calendar quarter. These quarterly reports will show the gross amount of kilowatt-hours of electric energy delivered and the consideration received therefor during each month of the previous quarter and the maximum hourly rate of transmission.

VI.

**EXHIBITS**

**Exhibit A** – Agreements – Not applicable at this time

**Exhibit B** – Legal opinion of OERI's Attorney

**Exhibit C** – Transmission system information (submitted in lieu of maps)

**Exhibit D** – Non-U.S. Applicant's power of attorney – Not applicable

**Exhibit E** – Statement of any corporate relationship or existing contract, which in any way relates to the control or fixing of electric power rates – Not applicable

**Exhibit F** – Operating procedures regarding available capacity and energy – Not applicable

**Attachment 1** – Copy of Order Conditionally Accepting for Filing Proposed Market-Based Rates, issued October 17, 1997, accepting OERI's Rate Schedule FERC No. 1.

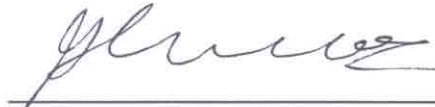
VII.

**CONCLUSION**

OGE Energy Resources, Inc. respectfully requests that this Application for Blanket Authority to Transmit Electric Energy to Canada be expeditiously considered and approved on substantially similar terms and conditions as applied to similarly situated electric power marketers, for a term of five (5) years.

Respectfully submitted,

OGE Energy Resources, Inc.



G. Rankin Schurman, II  
Vice President of Trading  
515 Central Park Drive, Suite 408  
Oklahoma City, Oklahoma 73105



## Exhibit A

### **AGREEMENTS**

OERI has entered into master enabling agreements with the following entities:

- 1) Saskatchewan Power Corporation (May 1, 2001)
- 2) Powerex Corp. (June 1, 2001)
- 3) The Manitoba Hydro-Electric Board (September 6, 2001)

However, these agreements merely provide the parties a framework by which transactions may be entered, and provisions governing the interpretation and enforcement of such transactions, if the parties choose to enter into a transaction. As such, none of these agreements obligate the parties to necessarily enter into any particular transactions that require the export of power into Canada. To date, OERI has not entered into any transactions under these master enabling agreements.

Exhibit B

**OPINION OF COUNSEL**



*OGE Energy Resources*  
An OGE Energy Corp. Company

April 11, 2003

U.S. Department of Energy  
Office of Fossil Energy (FE-27)  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-0305

**RE: Application of OGE Energy Resources, Inc. for Authorization to Transmit Electric Energy to Canada**

Dear Sir or Madam:

As Counsel to OGE Energy Resources, Inc. ("OERI"), an Oklahoma corporation, I have been asked to provide an opinion in relation to the "Application of OGE Energy Resources, Inc. for Authorization to Transmit Electric Energy to Canada" ("Application").

I have examined such records and other instruments as in my judgment are necessary or appropriate to enable me to render the opinion expressed below. This includes, but is not limited to, the Articles of Incorporation of OERI, as certified by the Secretary of State of the State of Oklahoma.

Based on the foregoing and subject to the limitations and qualifications set forth herein, I am of the opinion that the export of electric energy by OERI under the terms of the Application is within its corporate power.

The opinion expressed herein represents my judgment as to certain legal matters, but the opinion is not a guaranty or warranty and should not be construed as such. This opinion has been rendered to the addressee hereof on condition that the opinion expressed herein may be relied upon only by it and may not be used by it for any other purpose, nor published or otherwise communicated by it to any other party except with my express prior written approval or as may be required by law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tyson L. Williams".

Tyson L. Williams  
Attorney



Exhibit C

**TRANSMISSION SYSTEM INFORMATION  
CANADA**

OWNER	LOCATION	VOLTAGE	PRESIDENTIAL PERMIT NO.
Basin Electric Power Cooperative	Tioga, ND	230 kV	PP-64
Bonneville Power Administration	Blaine, WA	2-500 kV	PP-10
	Nelway, WA	2-230 kV	PP-36 & PP-46
Citizens Utilities Company	Derby Line, VT	120 kV	PP-66
Detroit Edison Company	St., Clair, MI	345 kV	PP-38
	Maryville, MI	230 kV	PP-21
	Detroit, MI	230 kV	PP-21
	St. Clair, MI	345 kV	PP-58
Eastern Maine Electric Cooperative	Calais, ME	69 Kv	PP-32
Joint Owners of the Highgate Project	Highgate, VT	345 kV	PP-82
Long Sault, Inc.	Massena, NY	2-115 kV	PP-24
Maine Electric Power Company	Houlton, ME	345 kV	PP-43
Maine Public Service Company	Limestone, ME	69 kV	PP-12
	Fort Fairfield, ME	69 kV	PP-12
	Arostock County, ME	138 kV	PP-29
	Madawaska, ME	2-69 kV	PP-29
Minnesota Power & Light Company	International Falls, MN	115 kV	PP-78
Minnkota Power Cooperative	Roseau County, MN	230 kV	PP-61
New York Power Authority	Massena, NY	765 kV	PP-56
	Massena, NY	2-230 kV	PP-25
	Niagra Falls, NY	2-230 kV	PP-74
	Devis Hole, NY	2-230 kV	PP-30
Niagra Mohawk Power Corporation	Devils Hole, NY	230 kV	PP-190
Northern State Power Corporation	Red River, ND	230 kV	PP-45
	Roseau County, MN	500 kV	PP-63
Vermont Electric Transmission Company	Norton, VT	450 kV	PP-76

Exhibit D

**NON-U.S. APPLICANT'S POWER OF ATTORNEY**

Not applicable.

Exhibit E

**STATEMENT OF CORPORATE RELATIONSHIP OR EXISTING CONTRACT THAT  
RELATES TO THE CONTROL OR FIXING OF ELECTRIC RATES**

Not applicable.

Exhibit F

**OPERATING PROCEDURES REGARDING AVAILABLE CAPACITY AND ENERGY**

Not applicable.



Attachment 1

**ORDER CONDITIONALLY ACCEPTING FOR FILING  
PROPOSED MARKET-BASED RATES**

UNITED STATES OF AMERICA 81 FERC ¶ 61,049  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, and William L. Massey.

OGE Energy Resources, Inc.  
Docket No. ER97-4345-000

ORDER CONDITIONALLY ACCEPTING FOR FILING  
PROPOSED MARKET-BASED RATES

(Issued October 17, 1997)

In this order, we conditionally accept for filing, without suspension or hearing, the proposed market-based power sales rates filed by OGE Energy Resources, Inc. (OGE Energy), an affiliate of Oklahoma Gas and Electric Company (OG&E).

Background

On August 25, 1997, OGE Energy filed an application for authorization to sell power at wholesale at market-based rates. In support of its application, OGE Energy states that it does not own any generation, transmission, or distribution facilities. OGE Energy also states that it plans to broker, as well as sell, electric power, including the brokering at no charge of the capacity and energy of its public utility affiliate, OG&E. OGE Energy nevertheless commits that it will not purchase capacity and energy from, or sell capacity and energy to, OG&E without prior Commission authorization pursuant to a future rate filing under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994).

OGE Energy seeks an effective date that is no later than 60 days from the date of its application for market-based rate authorization. It also requests the same waivers and authorizations as those granted by the Commission to other power marketers with market-based rate authorization.

Notice of OGE Energy's filing was published in the Federal Register, 62 Fed. Reg. 49,216 (1997), with comments, protests and interventions due on or before September 29, 1997. None was filed.

Discussion

Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately

mitigated, market power in generation and transmission and cannot erect other barriers to entry. In order for an affiliate of a transmission-owning public utility to demonstrate the requisite absence or mitigation of market power, the public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing. 1/

As explained below, we find that, with OG&E's filing of an open access pro forma compliance transmission tariff, 1/ OGE Energy's market-based rate application, as modified, meets these standards. Accordingly, we will accept the proposed market-based rates for filing, to become effective on the date of issuance of this order, upon the condition that OGE Energy modifies its code of conduct as discussed below.

#### Generation Market Power

OGE Energy states that it does not own, control or operate any electric generation, transmission or distribution facilities; however, its affiliate OG&E does own, control and operate such facilities. In support of its application for market-based rate authorization, OGE Energy submitted an analysis of OG&E's generation market power. That analysis indicates that, with OG&E's filing of an open access pro forma transmission tariff, OG&E's share of installed and uncommitted capacity will not exceed levels the Commission previously has found to be acceptable. 1/

- 1/ E.g., Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); accord Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,060-63 (1994) (Heartland).
- 2/ See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), reh'g pending (Open Access Rule).
- 3/ See, e.g., Southwestern Public Service Company, 72 FERC ¶ 61,208 at 61,966-67 (1995), reh'g pending; Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,146 (1993) (LG&E).



Accordingly, we find that OGE Energy meets the Commission's generation market power standard for approval of market-based rates.

Transmission Market Power

When an affiliate of a transmission-owning public utility seeks authorization to charge market-based rates, the Commission has required the public utility to have an open access pro forma transmission compliance tariff on file before granting such authorization. <sup>1/</sup> OG&E has filed open access pro forma compliance transmission tariffs in Docket Nos. OA96-17-000 (in response to Order No. 888) and OA97-591-000 (in response to Order No. 888-A). <sup>1/</sup>

For this reason, we find that OGE Energy meets the Commission's transmission market power standard for approval of market-based rates.

Other Barriers to Entry/Reciprocal Dealing

OGE Energy is affiliated with several companies that provide energy-related services, including the exploration for and the gathering, processing, transmission and storage of natural gas. Should any of OGE Energy's affiliates deny, delay, or require unreasonable terms, conditions, or rates for fuel or natural gas services to a potential electric competitor in bulk power markets, then that competitor may file a complaint with the Commission that could result in the suspension of OGE Energy's authority to sell power at market-based rates. <sup>1/</sup>

With this safeguard, we are satisfied with OGE Energy's explanation that there are no other barriers to entry or reciprocal dealing considerations of concern here.

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4/ See, e.g., Order No. 888, FERC Stats. & Regs. at 31,656-57; accord Southern Company Services, Inc., 71 FERC ¶ 61,392 at 62,536 (1995); Heartland, 68 FERC at 62,059-60.

5/ The open access transmission tariff filed by OG&E in Docket No. OA96-17-000 was set for hearing by order of the Commission in Long Sault, Inc., et al., 76 FERC ¶ 61,313 (1996). The Commission subsequently issued an unpublished letter order approving an uncontested settlement in that proceeding. OG&E's subsequent open access transmission tariff filing in Docket No. OA97-591-000 has been amended on several occasions and remains pending before the Commission.

6/ See, e.g., LG&E, 62 FERC at 61,148.



### Affiliate Abuse

OGE Energy commits not to purchase power from or sell power to OG&E without prior Commission authorization under section 205 of the FPA, 16 U.S.C. § 824d (1994). In addition, OGE Energy attaches to its filing a code of conduct, governing its affiliate relationship with OG&E, that satisfies most of the Commission's affiliate abuse requirements (including independent functioning and the pricing of non-power goods and services) for approval of market-based pricing. Among other things, the code of conduct meets the Commission's requirements (no fee, non-exclusivity, must-offer-first) applicable to the brokering of power from an affiliated public utility. 1/

The one area in which the code of conduct is deficient concerns the restrictions on the sharing of market information among affiliates. The code of conduct between OGE Energy and OG&E applies the information disclosure rules to certain market information only. We have explained that, to eliminate the possibility of affiliate abuse, all market information that is shared between a public utility and an affiliated power marketer must be disclosed simultaneously to non-affiliates. 1/ Accordingly, we will direct OGE Energy to revise its code of conduct to reflect this requirement.

With this revision to OGE Energy's code of conduct, we are satisfied that there are no affiliate abuse considerations of concern here.

### Waivers, Authorizations, and Reporting Requirements

OGE Energy has requested the following authorizations and waivers of various Commission regulations consistent with those granted other power marketers: (1) waiver of the filing requirements of Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and

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1/ See, e.g., Constellation Power Source, Inc., 79 FERC ¶ 61,167 at 61,784 (1997); MP Energy, Inc. and Montana Power Company, 78 FERC ¶ 61,005 at 61,012 (1997); Southern Company Services, Inc., 72 FERC ¶ 61,324 at 62,408 (1995), order on reh'g, 74 FERC ¶ 61,141 (1996).

2/ See, e.g., Consolidated Edison of New York, Inc. and ProMark Energy, Inc., 78 FERC ¶ 61,298 at 62,284 (1997); UtiliCorp United, Inc., et al., 75 FERC ¶ 61,168 at 61,556-57, reh'g denied, 76 FERC ¶ 61,192 (1996).

35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141; (3) abbreviated filings with respect to interlocking directorates under Parts 45 and 46; and (4) blanket authorization for issuances of securities or assumptions of liabilities under section 204 of the FPA, 16 U.S.C. § 824c (1994), and Part 34 of the Commission's regulations. We will

grant the requested authorizations and waivers to the extent granted other power marketers. 1/

Consistent with previous Commission decisions, we will require OGE Energy to file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter. This requirement is necessary to ensure that contracts relating to rates and services are on file as required by section 205(c) of the FPA, 16 U.S.C. § 824d(c) (1994), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power. 1/

In addition, we will direct OGE Energy to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (1) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the

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2/ OGE Energy also requests specific Commission assurance that the funds received in connection with power sales are not "facilities" within the meaning of FPA section 203; and that sales of accounts receivable do not constitute dispositions of jurisdictional facilities under FPA section 203. We previously have explained that sales of accounts receivable are not dispositions of jurisdictional facilities and are not within the scope of FPA section 203. See *Cataula Generating Company*, 79 FERC ¶ 61,261 at 62,133-34 n.9 (1997); *Pacific Northwest Generating Cooperative*, 78 FERC ¶ 61,018 at 61,077 & n.27, order on reh'g, 78 FERC ¶ 61,275 (1997); *DPL Energy, Inc., et al.*, 76 FERC ¶ 61,367 at 62,713 n.29 (1996). To the extent OGE Energy seeks a case-specific finding on this or any related point, it may file a petition for declaratory order.

10/ See, e.g., *Heartland*, 68 FERC at 62,065-66.

filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. 1/ Alternatively, OGE Energy may elect to report such changes in conjunction with the updated

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11/ See, e.g., Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 at 61,695 (1994), order on reh'g, 72 FERC ¶ 61,082 (1995); InterCoast Power Marketing, Inc., 68 FERC ¶ 61,248 at 62,134, clarified, 68 FERC ¶ 61,324 (1994).



market analysis it will be required to file every three years. 1/

The Commission orders:

(A) OGE Energy is hereby directed to file, within 15 days of the date of this order, a revised code of conduct as discussed in the body of this order.

(B) OGE Energy's market-based power sales tariff is hereby conditionally accepted for filing, to become effective on the date of this order, on the condition that OGE Energy makes the compliance filing directed in Ordering Paragraph (A) above.

(C) OGE Energy's request for waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted.

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by OGE Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (1997).

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, OGE Energy is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object, within the corporate purpose of OGE Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving OGE Energy. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and

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12/ We reserve the right to require such an analysis at any time.



- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of OGE Energy's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(H) OGE Energy's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(I) OGE Energy is hereby directed to conform to the filing and reporting requirements specified in this order. The first quarterly report of transactions undertaken by OGE Energy will be due within 30 days of the calendar quarter ending December 31, 1997.

(J) OGE Energy is hereby directed to file an updated market analysis within three years of the date of this order, and every three years thereafter.

(K) OGE Energy is hereby directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics that the Commission has relied upon in approving market-based pricing. Alternatively, as discussed in the body of this order, OGE Energy may elect to report any such changes every three years with the updated market analysis filed pursuant to Ordering Paragraph (J) above. OGE Energy shall notify the Commission of which option it elects in its first quarterly report filed pursuant to Ordering Paragraph (I) above.

(L) OGE Energy is hereby informed of the following rate schedule designations: OGE Energy Resources, Inc., Rate Schedule FERC No. 1 and Supplement No. 1 to Rate Schedule FERC No. 1 (Code of Conduct).

By the Commission.

( S E A L )

Lois D. Cashell,  
Secretary.

